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3 UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
5 OAKLAND DIVISION

6 KENNETH PHELON, et al.,

7 Plaintiffs,

8 vs.

9 JEREMY HAMMAN, et al.,

10 Defendants.  
11

Case No: C 09-3393 SBA

**ORDER DENYING APPLICATION  
TO PROCEED IN FORMA  
PAUPERIS ON APPEAL**

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13 On July 23, 2009, Plaintiff Kenneth Phelon filed a *pro se* complaint against various  
14 Oakland police officers and other individuals and entities pursuant to 42 U.S.C. § 1983,  
15 claiming that his civil rights were violated in connection with an ongoing state court criminal  
16 misdemeanor proceeding. Plaintiff later filed a First Amended Complaint adding Jolicia  
17 Kelley as a plaintiff. On January 18, 2011, the Court granted Defendants' unopposed motions  
18 to dismiss Plaintiffs' First Amended Complaint. Dkt. 69. On February 11, 2011, Plaintiff filed  
19 a notice of appeal of the Court's January 18, 2011 Order. Presently before the Court is Plaintiff  
20 Phelon's application to proceed in forma pauperis on appeal. Dkt. 73.

21 The in forma pauperis statute, 28 U.S.C. § 1915, permits the commencement of a civil  
22 action "without prepayment of fees and costs or security therefor, by a person who makes  
23 affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a).  
24 Under 28 U.S.C. § 1915(e)(2), federal courts are authorized to review claims filed in forma  
25 pauperis prior to service and to dismiss the case at any time if the court determines, inter alia,  
26 that the allegation of poverty is untrue. The benefit of proceeding in forma pauperis is a  
27 privilege, not a right. Franklin v. Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984). Thus, to  
28 obtain this privilege, the litigant must demonstrate, to the Court's satisfaction, his or her

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1 inability pay the requisite fees and costs. See Williams v. Marshall, 795 F. Supp. 978, 979  
2 (N.D. Cal. 1992).

3 In the present matter, Plaintiff states in his application that he has no monthly expenses,  
4 including no monthly expenses for rent, utilities, food, or clothing. Dkt. 73. The Court is  
5 concerned that Plaintiff has not accurately stated his monthly expenses. As a result, Plaintiff  
6 has failed to provide the information necessary to assess his application to proceed in forma  
7 pauperis. Accordingly,

8 IT IS HEREBY ORDERED THAT Plaintiff's application to proceed in forma pauperis  
9 on appeal is DENIED without prejudice to Plaintiff re-filing his application – within ten (10)  
10 days of the date this Order is filed – to address the deficiencies identified herein. This Order  
11 terminates Docket 73.

12 IT IS SO ORDERED.

13 Dated: 3/1/11

  
14 SAUNDRA BROWN ARMSTRONG  
15 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 KEN PHELON,

5 Plaintiff,

6 v.

7 JEREMY D. HAMMAN et al,

8 Defendant.  
/

9 Case Number: CV09-03393 SBA

10 **CERTIFICATE OF SERVICE**

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on March 1, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
17 located in the Clerk's office.

18 Jolicia Kelley  
19 2932 55th Avenue  
Oakland, CA 94605

20 Kenneth D. Phelon  
21 2932 - 55th Avenue  
Oakland, CA 94605

22 Dated: March 1, 2011

23 Richard W. Wieking, Clerk

24 By: LISA R CLARK, Deputy Clerk  
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